

SAMPLE LEASE



WASHINGTON STATE DEPARTMENT OF
Natural Resources
Doug Sutherland - Commissioner of Public Lands

ORCHARD/VINEYARD LEASE

Lease No. _____

BY THIS LEASE, the STATE OF WASHINGTON, Department of Natural Resources, hereinafter called the "State," leases to **NAME OF SUCCESSFUL BIDDER**, hereinafter called the "Lessee," the premises in «County» County, Washington, the legal description, encumbrances, and reservations, if any, of which are set forth in Exhibit 1A. This lease is made upon the terms and conditions and for the consideration enumerated herein. All exhibits to this lease are attached and incorporated herein.

SECTION 1 OCCUPANCY

1.01 Lease Term. This lease is effective as of January 1, 2007, or date of signature by the State, whichever is later, and shall expire on December 31, 2032.

1.02 Condition of Premises. Taking possession of the lease premises by the Lessee shall constitute acknowledgment by the Lessee that the lease premises are in good and tenantable condition and that the lease premises are in all respects suitable for the uses permitted in Section 2. The State has no obligation to make any repairs, additions, or improvements thereto and expressly disclaims any warranty that the lease premises are suitable for such permitted use(s).

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SECTION 2 USE OF PREMISES

The acres permitted in Subsection 2.01 shall be as Proposed by Bidder and based upon the parcel(s) bid.

2.01 Permitted Use. For this lease, the following use(s) and no other use(s) is/are permitted:

PERMITTED USE	ACRES	AUTHORIZED CROPS
Orchard		Tree Fruits
Vineyard		Wine Grapes
Non-Production		N/A

In the event the Lessee desires a change in acreage, crops, or use, including grazing, authorization must be obtained in advance and in writing from the State. Approval may be conditioned upon adjustment of the payments identified in Section 3, in accordance with changes in acreage, crops, or use. Permitted use(s) may be further limited by Section 6. The Lessee shall put the lease premises to full beneficial use in accordance with customary industry standards, the permitted use(s), acres, and crop(s) designated herein, and any plan of development schedules identified herein. Failure to do so will be grounds for default.

2.03 Plan of Development. The following are the minimum acres that must be developed by the dates specified:

DATE	ACRES	CROP & VARIETIES
To be Proposed by Bidder	To be Proposed by Bidder	To be Proposed by Bidder

If the Lessee fails to develop the lease premises according to the schedule set forth herein or the approved plan of development, the State may elect to cancel the lease or accept performance payments as provided under Subsection 3.04.

Any proposed changes in acreage, crops, or use of the lease premises must be submitted in writing to, and approved by, the State as a plan of development. The State will review the plan and, if acceptable, issue written approval. The Lessee shall perform all development according to the agreed upon terms of the plan of development.

2.04 Irrigation System Development. The Lessee shall furnish and install at the Lessee's own expense that portion of the irrigation system agreed to in the State approved irrigation system plan and design. The State will not pay for any portion of the irrigation system unless specifically agreed to in writing by the State.

2.05 Plans and Specifications. Except for any facilities that may be installed or constructed by the State, as set forth in the Notice of Leasing, the Lessee shall furnish and install all new or replacement irrigation facilities on the lease premises according to the following criteria:

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1. Plans. Plans shall be prepared by the Lessee to show location of the components, size of pumps, motors, pipelines, valves and other controls, including the electrical system and the overall length of each size of pipe. Plans shall be for the final design to irrigate the irrigable land for which water is available. Plans may show staged development to be completed over one or more years. Plans are subject to review and approval by the State.
2. Minimum Specifications. The buried portions of the irrigation system shall have a designed sprinkler application rate of at least eight (8) gallons per minute per acre. Trickle system application rates shall be at least five (5) gallons per minute per acre. All construction must meet the following conditions:
 - a. Materials used shall have a minimum expected life of twenty-five (25) years. The Lessee shall provide such information and data as needed for review of the materials. The Lessee shall install the system in accordance with the manufacturer's recommendations.
 - b. All components of the system shall have a manufacturer's design pressure of at least one hundred twenty-five (125) percent of designed operating pressures.
 - c. The velocity of water in the mainlines or submainlines of the system shall not exceed five (5) feet per second.
 - d. All plans shall include pressure relief valves, air relief valves, drains, thrust blocks and anodes.
3. Preconstruction Conference. A preconstruction conference will be held with the State to review the plans and specifications. The Lessee may request alteration or deviation from the above specifications at this conference. Any change in specifications must be authorized in writing by the State before construction begins.

2.06 Operating Schedule. The Lessee shall notify the State fifteen (15) days prior to starting work on the development of the lease premises as set forth in this lease, and both parties shall meet prior to starting any development to establish an operating schedule.

2.07 Compliance Specifications. On all improvements relating to the development of the lease premises, the State:

1. May make compliance inspections during construction. If construction is not in accordance with approved plans and specifications, the Lessee shall immediately take such actions as required to correct any deficiency.
2. Shall make a final inspection of the completed project and, if acceptable, shall issue its written acceptance.

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The State's approval or disapproval of any plans, specifications, improvements or completed projects, shall not obligate or render the State liable in any way.

2.08 Limitations on Use. In connection with use of the lease premises, the Lessee shall:

1. Conform to all applicable laws, rules and regulations of any public authority affecting the lease premises. The Lessee shall provide to the State, within ten (10) days of receipt of same, a copy of any notice received from any public authority which indicates that the Lessee is not in compliance with applicable laws, rules and regulations. In addition, the Lessee shall bear, at the Lessee's sole expense, any costs associated with bringing the lease premises into compliance, including any attorneys' fees, costs, fines or penalties;
2. Remove no valuable material or timber, without prior written approval of the State;
3. Take all reasonable precautions to protect the lease premises from fire, and make every effort to report and suppress such fires as may occur;
4. Obtain all applicable licenses or permits;
5. Use only electric fencers approved by Underwriters Laboratories;
6. Not live, reside, or permit others to live or reside on the lease premises without prior written approval from the State.

SECTION 3 PAYMENT

Payments made hereunder will be applied first to interest, then to outstanding or delinquent rent, leasehold tax and other charges owed, then to current rent, leasehold tax, and charges.

3.01 Minimum Cash Rent. There shall be a cash rental payment of \$178.00 per acre beginning on January 1, 2007, subject to Subsection 3.08. Rent shall be paid semi-annually with the first half payment due on April 1, and the second half payment due on October 1.

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3.02 Production Rent. For each crop year, the Lessee shall pay by November 1 of that year, the following production rent based on the gross production from the crops listed below grown and harvested on the lease premises subject to Subsection 3.07:

CROP	STATE'S PRODUCTION RENT
Apples	\$8.00 per Bin*
Cherries	\$60.00 per Ton*
Organic Apples	\$12.00 per Bin*
Apricots	\$50.00 per Ton*

Orchard Production Rent above is the minimum acceptable rent and any increase in price per bin or per ton must be a part of the sealed bid. [Increases in price per bin must be in increments of \$0.10 or more. Increases in price per ton must be in increments of \$1.0]

For the purposes of this lease Gross Production is defined as the total amount of agricultural commodity harvested. No deduction shall be made for any on-farm sales. Costs incurred by the Lessee in establishing, growing, or harvesting the crops are irrelevant to this calculation.

* A Bin is defined as the current standard apple bin with dimensions of four feet x four feet x thirty inches. A Ton is 2,000 pounds.

1. Payment. A report of accounting used to determine the State's Production Rent shall accompany payment. Payment shall be made to the State no later than November 1 each year.
2. Accounting. The Lessee shall provide or require commercial handlers, processors, or purchasers of the crops to prepare and submit to the State, at its Region Office, by November 1 each year, a full and independent report, including the delivery dates and number of units delivered (tons, bushels, bins, CWT, etc).

3.03 Percentage Rent. The Lessee shall pay the State the following percentage of the Return to Grower from the crops from the crops listed below grown and harvested on the lease premises subject to Subsection 3.07:

CROP	STATE'S PERCENTAGE
Wine Grapes	5.0% is the Minimum Bid

For the purposes of this lease, Return to Grower is defined as the gross proceeds or receipts received by the Lessee upon the sale or other disposition or transfer of crops, plus any crop insurance proceeds, less only those customary warehousing, storage, processing, packing, crop commission, transportation, and brokerage charges, incurred and paid by the Lessee at the point such crops are processed, packed, or sold. Charges for these services are deductible only if costs do not exceed customary and reasonable rates for comparable services. Commercial warehouse/processor receipts substantiating actual charges incurred and paid, or deducted, shall

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be submitted by the Lessee for the State's review and approval. No deduction shall be made from on-farm sales. Costs incurred by the Lessee in establishing, growing, or harvesting the crops shall not be deductible.

1. Marketing. All crops are to be sold at their fair market value and are to be produced, harvested and, if authorized in writing by the State, farm-stored on the lease premises in accordance with good and reasonable agricultural practices and in the same manner as comparable crops produced on other lands in the ownership or control of the Lessee; this shall include time of harvest, kind and quality of storage facilities, and similar marketing schedules. All crops harvested on the lease premises are to be delivered to bonded, licensed, commercial warehouses, processors, or handlers immediately after harvest, unless prior written authorization to do otherwise is obtained from the State. At the State's request, the Lessee shall provide the State with a copy of the contract or agreement with such processing or marketing outlet prior to such delivery. All on-farm sales are to be handled, reported, and accounted for in the same manner as required for sales to licensed and bonded commercial handlers, processors, and purchasers.
2. Accounting. The Lessee shall provide or require commercial handlers, processors, or purchasers of the crops to prepare and submit to the State, at its Region Office by December 31st of pertinent crop year, a full and independent report, including the following information, where applicable:
 - a. Delivery dates and number of units (tons, bushels, bins, CWT, etc).
 - b. Services provided, charges per unit of crop, and/or other charges.
 - c. Grades, sizes, pack-out, cullage, etc, with values.
 - d. Delivery dates and the amounts of crop transferred to another handler, with grades and values.
 - e. Gross sales values, deductions, dates, and amount of payments made to the grower.
 - f. Any additional amounts receivable from, or payable to, the grower.
 - g. Any amounts retained by the warehouse or co-op, in the form of retainages or grower contributions.
3. Payment. A report of accounting and marketing methods used to obtain the State's share of revenue shall accompany all payments. All crops shall be sold and final payment shall be made to the State within twelve (12) months after each harvest, unless other marketing schedules are approved in advance, and in writing, by the State.

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Any exceptions to the approved methods of payment and reporting as shown below in 3.a., 3.b., and 3.c., must be approved in writing by the State prior to the date of harvest.

- a. Non-Pooled Crops. For all non-pooled crops delivered or sold to, through, or by processing or marketing outlets, the Lessee shall request a division of the sales receipts at the time of sale with separate checks for the State and the Lessee. The check for the State's share shall be mailed directly to the State at its Region Office.
- b. Pooled Crops. For all pooled (commingled) crops, the Lessee shall submit a report on a quarterly basis (December 31, March 31, June 30, and September 30 of each year) of pool sales and marketing. Even if there was no sales activity, a report is due to the State at its Region Office no later than thirty (30) days after the above dates. Full payment is due to the State at its Region Office no later than thirty (30) days after the pool has been sold and the proceeds distributed by the warehouse. A full accounting of the pool calculation of net proceeds shall accompany payment.
- c. Direct Sales and Marketing. Payments due on all crops directly sold or marketed, or otherwise disposed of by the Lessee, shall immediately be made to the State at its Region Office, but in no case later than thirty (30) days after such sales, marketing, or other disposition.

3.04 Performance Payment. Commencing _____ (date as proposed by Bidder) and annually thereafter, the Lessee shall pay, in addition to all other payments, an annual performance payment of \$400.00 for each acre not developed and maintained in accordance with the schedules set forth in Subsections 2.01, 2.03, and 6.08. In addition to the right to receive an annual performance payment when the Lessee fails to meet the development schedules, the State may demand in writing that the lease premises be put to the uses required under Subsections 2.01, 2.03, and 6.08 within a reasonable time frame as determined by the State. Upon such written demand by the State, the Lessee shall bring the lease premises into compliance with the revised development schedules set forth in the demand, or the Lessee shall be deemed in material breach, and the State shall be entitled to cancel the lease.

At the State's option, beginning in year ten of this lease, the State may require Lessee to pay an additional performance payment. Any year that the most current five-year running average of rent paid to the State falls below current average irrigated rent within the local agronomic zone, the Lessee shall pay the difference as an additional performance payment, due and payable upon billing by the State. Dispute resolution shall be handled according to the terms of Subsection 3.07.

3.05 No Counterclaim, Setoff, or Abatement of Rent. Rent and all other sums payable by the Lessee hereunder shall be paid without the requirement of prior notice or demand by the

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State, and shall not be subject to any counterclaim, setoff, deduction or defense and without abatement. The obligations and liabilities of the Lessee hereunder shall in no way be released, discharged or otherwise affected.

3.06 Interest Penalty for Past-Due Rent and Other Sums Owed. The Lessee shall pay interest at the rate of one percent (1%) per month (or at such higher rate as may be authorized by statute after the commencement date hereof), until paid, on rent or other sums owing under the terms of this lease, commencing the date such rent or other sum is due and payable. In the event the State pays any sum or incurs any expense which the Lessee is obligated to satisfy or pay under this lease, or which is made on behalf of the Lessee, the State shall be entitled to receive reimbursement thereof from the Lessee upon demand, together with interest thereon from the date of expenditure at the rate stated above.

3.07 Adjustment of Production and Percentage Rent. A new percentage/production rent may be established for the crop to be harvested in 2017 and adjusted not more than once every five (5) years thereafter. The new percentage/production rent will be determined and established by an evaluation based on fair market rental values at the time of adjustment, as determined by the State's representative. The percentage/production rent adjustment evaluation will be completed prior to 2017 of the year selected for adjustment of the percentage/production rent, and the new percentage/production rent made effective for the crop to be harvested the following year. The State does not waive its right to adjust or revalue rent under this subsection by any failure to adjust or revalue at the end of a particular five-year period, and shall retain the authority to adjust or revalue the Lessee's rent or re-evaluate rent at any point subsequent to any five-year anniversary date.

3.08 Adjustment of Cash Rent. The cash rent shall be subject to adjustment by the State not more than once every five years; such adjustment shall be determined by the State through an evaluation of fair market rental value.

The State does not waive its right to adjust or revalue rent under this subsection by any failure to adjust or revalue at the end of an adjustment period, and shall retain the authority to adjust or revalue the Lessee's rent or re-evaluate rent at any point subsequent to an adjustment period.

3.09 Leasehold Excise Tax on Cash Rent and Percentage Rent. In addition to all rents, the Lessee shall pay leasehold excise tax, in compliance with Chapter 82.29A of the Revised Code of Washington.

3.10 Tax Compliance. If the State must pay any taxes, penalties or interest because of the Lessee's failure to pay such taxes, penalties or interest, the Lessee shall immediately reimburse the State for such expenditures and the obligation shall accrue interest until paid.

3.12 Audit of Records. The Lessee shall hire an independent certified public accounting firm, as defined by the State of Washington Accountancy Board (firm), approved in writing and in advance by the State, to report on the Lessee's compliance with the financial terms of this lease. The firm shall perform agreed upon procedures in accordance with standards established by the American Institute of Certified Public Accountants to test pertinent documentation for

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each three (3) year period of the term of the lease, and shall complete a final engagement at the termination of the lease. The firm shall, immediately upon completion of its engagement, submit a report of its findings to the State, regarding the status of the Lessee's compliance and any overpayments or underpayments; the Lessee shall also be sent a copy of these findings. Only matters relating to this lease will be subject to the engagement.

To meet the minimum qualifications and be approved by the State, the firm shall provide the following: evidence of significant experience working in the agricultural industry and experience with lease arrangements; evidence of having gone through an onsite peer review of its accounting and auditing practice by providing the State with its most recent peer review report; and, information as to its experience with performing engagements of this nature and with State requirements, or direct contracting with the State.

At a minimum, the firm will:

1. Provide the State with an engagement plan, prior to beginning the engagement.
2. Use Generally Accepted Accounting Principles and Standards and the terms and conditions of this lease as the basis for all findings and determinations. In the absence of clear direction, all assumptions will be fully stated.
3. Determine if payments made to the Lessee from third parties properly correlate with payments made by the Lessee to the State.
4. Reconcile accounts, e.g., compare harvest amounts to processed and packaged amounts, and certify that proper payments were made.
5. Compute the return to grower, as defined in Subsection 3.03, by crop and variety.
6. Review all pack-out statements and fruit processing statements for the appropriateness of grades, sizes, fees, royalties, charges, transportation, etc., and the timeliness of all payments.
7. Determine if returns and charges are comparable with industry averages; if not, explain why. State the relative profitability (ranking) of the grower, compared to others in the same pool or similarly situated.
8. Make appropriate recommendations on findings and suggestions on improvements that could be implemented, such as improved forms, clarifying lease requirements, or other fiscally pertinent matters.

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SECTION 4 RESERVATIONS

4.01 Compliance. The State shall have access to the lease premises at all reasonable times to determine and secure compliance with this lease. Failure to inspect or enforce compliance shall not be construed as a waiver of the State's right to declare a breach, nor relieve the Lessee of any liability to the State for any breach of the terms, conditions, or requirements of this lease.

4.02 Access. The State reserves the right to grant easements on the lease premises. The easement applicant may be required to remedy any damages to the leasehold.

The Lessee's plan of development and placement of improvements must be such that access to State's adjacent ownership, if any will not be impaired.

4.03 Uses. The State reserves the right to lease the lease premises for other uses which are compatible with the Lessee's permitted use(s). The Lessee's permitted use(s) are set forth in Subsection 2.01.

4.04 Public Hunting, Fishing and Nonconsumptive Wildlife Activities. The premises shall be open and available to the public for purposes of hunting, fishing and nonconsumptive wildlife activities, unless a closure is authorized in writing by the State, as stated in RCW 79.10.125. In the event that a closure is authorized for hunting, fishing or nonconsumptive wildlife activities, any or all, the Lessee shall post the premises accordingly with signs to inform the general public of such closure. Authority to close the premises may be given to protect interests of the Lessee, the State, or the general public.

4.05 Resource Disposal. The State reserves the right to sell, lease or otherwise dispose of minerals, coal, oil, gas, gravel, stone, forestry resources or other valuable materials from the lease premises. The Lessee shall be entitled to payment for damages to its leasehold interests caused by the disposal of such materials.

4.06 Roads. During the term of this lease, the Lessee is granted, subject to rights previously granted, a nonexclusive easement to use existing roads on the lease premises only for permitted operations under this lease. The State reserves the right to build roads and grant easements to others to use new and existing roads, subject only to a ratable reduction in, by equitable division with other users, the cost of maintenance and repair of such roads. The Lessee may not construct new roads or undertake any modification or alteration to existing roads without the prior written consent of the State.

4.08 Non-Default Termination. In response to a written request from the Lessee asking to surrender the leasehold, the State may, at its sole discretion, terminate all or part of this lease upon satisfaction by the Lessee of all outstanding rents, duties, and obligations. The State may condition the surrender upon payment of a fee to be set by the State.

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SECTION 5 REQUIREMENTS

5.01 Assessments. The Lessee shall pay all assessments that may be charged against the lease premises. Assessments for improvements shall be paid in an amount proportionate to the remaining term of this lease and the life of the improvements, unless otherwise provided in writing by the State. The Lessee's obligations under this subsection are not limited to assessments relating to the encumbrances (if any) listed in the legal description referred to in Exhibit 1A of this lease, but extend to all assessments that may be charged against the lease premises, including, but not limited to, weed assessments, watershed protection district assessments, conservation district assessments, storm water runoff assessments, and local improvement district assessments.

5.02 Utilities. The Lessee shall be liable for all electrical power and other utility charges or expenses, including power minimums and disconnect charges incurred prior to termination or expiration of this lease.

5.03 Taxes. The Lessee shall pay all federal, state and local taxes including, but not limited to, personal property tax and leasehold excise tax that may be charged against the lease and improvements located on the lease premises.

5.04 Insolvency of Lessee. If the Lessee becomes insolvent, bankrupt, or has a receiver appointed, the State may terminate this lease. Insolvency as used herein will mean the inability of the Lessee to meet obligations as they come due.

5.05 Insurance/Indemnity/Hold Harmless. To the fullest extent permitted by law, the Lessee shall indemnify, defend and hold harmless the State, agencies of the State and all officials, agents and employees of the State, from and against any and all claims, including claims by the Lessee's employees, agents, and contractors, arising out of or resulting from any act or omission of the Lessee, its agents, employees and contractors while operating under this lease or at the lease premises. "Claims" as used in this subsection means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable to bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting therefrom. The Lessee's obligation to indemnify, defend and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of the State or its agents, agencies, employees and officials. The Lessee waives its immunity under Title 51 to the extent it is required to indemnify, defend and hold harmless the State and its agencies, officials, agents or employees.

General Insurance Requirements. The Lessee shall, at all times during the term of the lease at its cost and expense, buy and maintain insurance of the types and amounts listed below. Failure to buy and maintain the required insurance may result, at the State's option, in default of this lease.

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All insurance and surety bonds should be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception shall be reviewed and approved by the State's Risk Manager, before the lease is executed. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.

Before starting work under this lease, the Lessee shall, at the State's request, furnish the State at its Region Office with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements and lease.

The State shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accordance with the following specifications:

1. Insurers subject to 48.18 RCW (Admitted and Regulated by the Insurance Commissioner): The insurer shall give the State forty-five (45) days advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the State shall be given ten (10) days advance notice of cancellation.
2. Insurers subject to 48.15 RCW (Surplus lines): The State shall be given twenty (20) days advance notice of cancellation. If cancellation is due to non-payment of premium, the State shall be given ten (10) days advance notice of cancellation.

Sublessee(s) and assignee(s) must comply fully with all insurance requirements stated herein. The Lessee shall include all sublessee(s) and assignee(s) as insureds under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each sublessee or assignee. Failure of sublessee(s) or assignee(s) to comply with insurance requirements does not limit the Lessee's liability or responsibility.

The State, its elected and appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, umbrella and property insurance policies.

All insurance provided in compliance with this lease shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State.

The Lessee waives all rights against the State for recovery of damages to the extent these damages are covered by general liability or umbrella insurance maintained pursuant to this lease.

If the Lessee is self-insured, evidence of its status as a self-insured entity shall be provided to the State and incorporated in the lease. If requested by the State, the Lessee must describe its financial condition and the self-insured funding mechanism.

By requiring insurance herein, the State does not represent that coverage and limits will be adequate to protect the Lessee, and such coverage and limits shall not limit the Lessee's liability under the indemnities and reimbursements granted to the State in this lease.

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The limits of insurance, which may be increased by the State, as deemed necessary, shall not be less than as follows:

<u>Description</u>	<u>Commercial General Liability (CGL) Insurance</u>
General Aggregate Limit	\$2,000,000
Each Occurrence Limit	\$1,000,000

The Lessee shall maintain commercial general liability (CGL) insurance and, if necessary, commercial umbrella insurance with a limit of not less than the amounts listed above per each occurrence. If such CGL insurance contains aggregate limits, the General Aggregate limit shall be at least twice the "each occurrence" limit. CGL insurance shall have products-completed operations aggregate limit of at least two times the "each occurrence" limit.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 (or a substitute form providing equivalent coverage). All insurance shall cover liability arising out of lease premises, operations, independent contractors, sublessees, assignees, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract), and contain separation of insureds (cross liability) condition.

Employer's Liability Insurance and Worker's Compensation Insurance. The Lessee shall buy employers liability insurance and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

The Lessee shall comply with all State of Washington workers compensation statutes and regulations. Workers compensation coverage shall be provided for all employees of the Lessee and employees of any assignees or sublessees. Coverage shall include bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this lease. Except as prohibited by law, the Lessee waives all rights of subrogation against the State for recovery of damages to the extent they are covered by workers compensation, employers liability, commercial general liability or commercial umbrella liability insurance.

If the Lessee, sublessee or assignee fails to comply with all State of Washington workers compensation statutes and regulations and the State incurs fines or is required by law to provide benefits to or obtain coverage for such employees, the Lessee shall indemnify the State. Indemnity shall include all fines, payment of benefits to the Lessee, sublessees, assignees, employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such.

Business Auto Policy. The Lessee shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of "Any Auto".

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Business auto coverage shall be written on ISO form CA 00 01, or substitute liability form providing equivalent coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage and cover a "covered pollution cost or expense" as provided in the 1990 or later editions of CA 00 01.

The Lessee waives all rights against the State for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.

Insurance for State-Owned Equipment and Structures. The Lessee shall buy and maintain property insurance covering all real property and fixtures, equipment, and the Lessee's improvements and betterments. Such insurance shall be written on an all risks basis and, at a minimum, cover the perils insured under ISO special causes of loss form CP 10 30, and cover the full replacement cost of the property insured. Such insurance may have commercially reasonable deductions.

Any coinsurance requirement in the policy shall be waived.

The State shall be included as an additional insured and loss payee under the property insurance policy.

The Lessee shall buy and maintain boiler and machinery insurance required by contract documents or by law, covering real property, fixtures, equipment and the Lessee's improvements or betterments from loss or damage caused by the explosion of steam boilers or pipes.

In the event of any loss, damage or casualty which is covered by one or more of the types of insurance described herein, the parties to this lease shall proceed cooperatively to settle the loss and collect the proceeds of such insurance, which shall be held in trust by the State, including interest earned by the State on such proceeds, for use according to the terms of this lease.

The parties agree that such insurance proceeds shall be used to repair and restore damaged improvements to their former condition and usefulness or replacement of the same with equivalent or more suitable improvements.

When sufficient funds are available, using insurance proceeds described above, the parties shall continue with reasonable diligence to prepare plans and specifications for, and thereafter carry out, all necessary work to:

1. Repair and restore damaged building(s) and/or improvements to their former condition, or
2. Replace said building(s) and/or improvements with a new building(s) and/or improvements on the lease premises of a quality and usefulness at least equivalent to, or more suitable than, damaged building(s) and/or improvements.

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5.06 Records. The Lessee shall prepare, maintain, and keep records in accordance with acceptable record keeping practices. A clear, complete, detailed record and accounting of business of every kind and character affecting payment due the State and crop production, shall be maintained at a location in Washington, for a period of at least three (3) years following: (1) each harvest; (2) payment of rent; or, (3) the date accounting is provided to the State, whichever is later. Further, the Lessee shall prepare, maintain, and keep records of management practices conducted on the lease premises, including, but not limited to, the use of pesticides, for the term of this lease or as required by law.

5.07 Right to Examine Books and Records. The acceptance by the State of any payment under Section 3 herein shall be without prejudice to the State's right to examine the Lessee's books and records to verify the amount of crops and/or proceeds received by the Lessee from the lease premises. The Lessee shall authorize and permit the State or its agents to examine any and all books, records and files of all kinds for the confidential use of the State for the purpose of determining and enforcing compliance with the provisions of this lease.

5.08 Audit. At its option, the State or its agents may conduct, at any reasonable time upon forty-eight (48) hours' notice, an audit of the Lessee's business records. If an audit discloses additional liability to the State, the Lessee shall immediately pay all amounts due plus interest from the date such payment was originally due and payable, but in no case later than thirty (30) days after notice of the additional liability.

5.09 Harvest Reports. The Lessee shall, as soon as possible, furnish harvest reports to the State at its Region Office, but in no case later than thirty (30) days after final date of harvest of all crops. For alfalfa, hay and other crops harvested for hay, a harvest report shall be furnished for each cutting. For tree fruit or grapes, the Lessee shall, as soon as possible, furnish harvest reports to the State at its Region Office, but in no case later than thirty (30) days after final harvest of each crop and variety located on the lease premises.

Harvest reports shall include the planted acreage and variety of crops harvested, quantity, the grades if known, the field number, circle number or location of each crop grown and the place of storage, processing or other disposition of the crops.

5.10 Conservation Plan. Prior to cultivating any previously uncultivated land on the lease premises, the Lessee shall agree to and comply with a conservation plan prepared and approved by the Natural Resource Conservation Service (NRCS) before disturbing any vegetation or soil on the lease premises. The Lessee shall furnish to the State a copy of the approved conservation plan fifteen (15) days prior to disturbing any vegetation or soil on the lease premises. The plan shall be partial fulfillment of the requirements set forth in Subsection 6.02(1).

SECTION 6 MANAGEMENT

6.01 Weed Control. The Lessee shall control all noxious weeds on all lands under this lease. The Lessee shall be responsible for, or shall immediately reimburse the State, any noxious weed

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control cost incurred as a result of the Lessee's failure to control noxious weeds on said lease premises.

6.02 Management. The Lessee shall manage and maintain the lease premises, and all improvements regardless of ownership thereof, in accordance with customary standards of the industry. In addition, the Lessee shall:

1. Follow the "Resource Management Plan" (RMP) attached hereto as Exhibit 6A and by this reference made a part hereof. The State shall have the right to amend the RMP to meet future needs or changes in circumstances.
2. Upon request of the State, and jointly with the State, enter into a "Management Agreement" (MA) which, by this reference shall be made a part of this lease, identifies specific management objectives for the Lessee's operation and the specific steps or practices which the Lessee shall implement in order to meet these objectives. The Lessee shall meet the specific management objectives by the dates outlined in the MA. The State shall have the right to amend the MA to meet future needs or changes in circumstances.
3. The Lessee acknowledges that a "Coordinated Resource Management" (CRM) plan either has been or may in the future be developed between the Lessee, the State and other landowners in the general location of the lease premises for the protection, preservation, and use of agricultural and grazing premises under multiple ownership. The Lessee hereby agrees to cooperate voluntarily with the State and other landowners to develop a CRM plan. Once a CRM plan is developed, the terms of the CRM plan shall become a part of this lease.
4. Perform and furnish all labor, equipment and materials including, but not limited to, seed, fertilizer, agricultural chemicals, and farm tools sufficient for the production and harvest of all crops.
5. Manage the lease premises to procure the highest economically feasible return therefrom. Comply with all measures the State may require to prevent the commingling of crops or confusion of the proceeds from the lease premises with any other premises, whether or not operated by the Lessee. For yield calculations and payments pursuant to Subsections 3.02 and 3.03, no crop from the State's land may be commingled with a like crop without prior written approval from the State.
6. Incorporate all crop residue and stubble into the soil at a time and by a tillage method recommended by the County Extension Agent (Agent) or the NRCS Soil Conservation Technician (Technician) for the local area, so as to comply with all state and federal laws relating to water and air quality, and to avoid soil erosion. Any deviation from the technical recommendations by the Agent or Technician must be authorized in writing by the State.

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6.03 Federal Farm Program. The Lessee shall conform with United States government federal farm programs as they now exist, or as they may be amended, to maintain the State's eligibility to obtain payments related to program participation. Deviations from such programs are permissible only if allowed, in advance, in writing by the State. Participation in any land retirement program must have prior written approval from the State.

6.04 Water Supply. The Lessee shall comply with the Contract for Delivery of Water for Irrigation, Frost Control and Orchard Cooling entered into on September 2, 1998 with the South Slope Irrigation District, and any amendments thereto, which by this reference is made a part hereof. The Lessee shall put the irrigation water to full beneficial use. The Lessee shall utilize the water on the lease premises, and shall do so in a manner which shall preserve and protect the State's rights to use of the water.

Further, the Lessee shall comply with the provisions of Ground Water Certificate No. G4-28427C, and Surface Water Certificates Nos. S4-26501C and S4-28284C, attached as Exhibit(s) 6C, 6D, and 6F, respectively, and by this reference is made a part hereof. The Lessee shall manage and utilize the water to protect the State's rights for use of the water.

The State does not guarantee or warrant the quality or quantity of any water or water supply. The State shall not be liable for any water related problems such as, but not limited to, lack, contamination, failure, excess, shortage, interruption or stoppage of water.

6.06 Irrigation System. The Lessee has inspected the State-owned irrigation system on the lease premises and accepts the same in its present condition. The State does not warrant the system's fitness for intended use, its capacity, or the quality or quantity of water which it may produce. The Lessee shall, at its sole expense, maintain, winterize and repair the State-owned irrigation system in a prudent manner to keep it operational.

6.07 Maintenance Records. The Lessee shall keep at a reasonable location, clear, complete and detailed records of all maintenance, repairs, and replacement of parts of every kind and character, affecting the State-owned irrigation system.

6.08 Irrigation and Planting Requirements. The Lessee shall prepare the land, and furnish and install the irrigation system as set forth in Subsections 2.01, 2.03, 2.04, and 2.05 so as to establish grapes and/or tree fruits on the lease premises in accordance with the following schedule:

As Proposed by Bidder

1. The Lessee shall plant and maintain ### acres or more of grapes/tree fruits by Date . A maintained acre shall have no fewer than ### grape plants or ### fruit trees per acre, unless prior approval by the State is given in writing. The Lessee shall plant and maintain an additional ### acres or more of grapes/tree fruits by Date and the remaining feasible acres by Date .
2. On or before Date , and each year thereafter, the Lessee shall submit a report of

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acres, varieties and density of grapes/tree fruits planted the previous year until all planting requirements have been met.

6.09 Site Rehabilitation. Prior to expiration or termination of this lease, at the State's request and sole option, the Lessee, at its sole cost, shall rehabilitate the lease premises as follows:

The Lessee shall till that portion of the lease premises planted to tree fruit and/or wine grapes by use of a rotovator or comparable machinery, at a minimum depth of eighteen (18) inches to remove all, stumps, and roots. The Lessee shall dispose of all, stumps, and roots.

The Lessee shall remove all above-ground irrigation systems, trellis systems and other above ground fixtures.

On January 1, 2026, or any time thereafter, the State at its sole option may elect for the Lessee to provide to the State performance security in the amount equal to the full cost of site reclamation as outlined in the subsection in the form of a cash deposit, a certificate of deposit or a performance bond issued by a company acceptable to the State, to guarantee payment of damages and performance of all provisions or unfulfilled obligations under this subsection.

6.10 Deleterious, Hazardous, Toxic, or Harmful Substances.

1. Deleterious Material. The Lessee shall not make, or suffer to be made, any filling in of the lease premises or any deposit of rock, earth, ballast, refuse, garbage, waste matter, chemical, biological or other wastes, hydrocarbons, any other pollutants, or other matter within or upon the lease premises, except as approved in writing by the State. If the Lessee fails to remove all nonapproved fill material, refuse, garbage, wastes or any other of the above materials from the lease premises, the Lessee agrees that the State may, but is not obligated to, remove such materials and charge the Lessee for the cost of removal and disposal.
2. Hazardous, Toxic, or Harmful Substances.
 - a. The Lessee shall not keep on or about the lease premises, any substances now or hereinafter designated as or containing components now or hereinafter designated as hazardous, toxic, dangerous, or harmful, and/or which are subject to regulation as hazardous, toxic, dangerous, or harmful by any federal, state or local law, regulation, statute or ordinance (hereinafter collectively referred to as "Hazardous Substances") unless such are necessary to carry out the Lessee's permitted use(s) under Subsection 2.01 and unless the Lessee fully complies with all federal, state and local laws, regulations, statutes, and ordinances, now in existence or as subsequently enacted or amended.

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b. The Lessee shall:

- (1) Immediately notify the State of (i) all spills or releases of any Hazardous Substance affecting the lease premises, (ii) all failures to comply with any federal, state, or local law, regulation or ordinance, as now enacted or as subsequently enacted or amended, (iii) all inspections of the lease premises by, or any correspondence, orders, citations, or notifications from any regulatory entity concerning Hazardous Substances affecting the lease premises, (iv) all regulatory orders or fines or all response or interim cleanup actions taken by or proposed to be taken by any government entity or private party concerning the lease premises; and
- (2) On request, provide copies to the State of any and all correspondence, pleadings, and/or reports received by or required of the Lessee or issued or written by the Lessee or on the Lessee's behalf with respect to the use, presence, transportation or generation of Hazardous Substances related to the lease premises.

c. The Lessee shall be fully and completely liable to the State, and shall indemnify, defend, and hold harmless the State and its agencies, employees, officers, and agents with respect to any and all damages, costs, fees (including attorneys' fees and costs), penalties (civil and criminal), and cleanup costs assessed against or imposed as a result of the Lessee's use, disposal, transportation, generation and/or sale of Hazardous Substances or that of the Lessee's employees, agents, assigns, sublessees, contractors, subcontractors, licensees or invitees, and for any breach of this subsection.

6.11 Condition of Premises at End of Lease. Prior to vacating the lease premises, the Lessee shall leave the lease premises and all improvements thereon to which the State has elected to claim title in the state of repair and cleanliness required to be maintained by the Lessee during the term of this lease, and shall peaceably and quietly surrender the same to the State.

If there is more than one successful bidder of the referenced parcels the following Subsection 6.20 shall be included.

6.20 Formal Cooperative Agreement. Within 60 days of signing the lease a Formal Cooperative Agreement will be entered into by all Lessees, "Users Group", holding DNR leases located within the Paterson Orchard Property described in Exhibit 6E, which by this reference is made a part hereof. The purpose of the Agreement is to establish the guidelines agreed upon by the Users Group to design, construct, maintain and pay for common access roads, as well as to operate, maintain and pay for the common irrigation system and power consumption. The State shall have the right to substitute a different Lessee as a party to the Agreement upon the

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substitute Lessee assuming the responsibilities of a former Lessee. The Formal Cooperative Agreement shall be subordinate to the terms of this lease agreement.

SECTION 7 SUBLEASES AND ASSIGNMENTS

7.01 Sublease. The lease premises, in whole or in part, and the appurtenances thereon shall not be subleased without prior written approval from the State. If the sublease is approved, the Lessee shall remain obligated and responsible for all actions on the lease premises, including compliance with all provisions contained in this lease.

7.02 Assignment. The Lessee shall not hypothecate, mortgage, assign, encumber, transfer, or otherwise alienate this lease, or any interest therein, or engage in any other transaction which has the effect of transferring or affecting the right of enjoyment of the lease premises, without the prior written approval of the State.

If the Lessee is a corporation, partnership or other association, the transfer of more than fifty percent (50%) of the ownership interest in such entity, or the sale of all or substantially all of the assets of such Lessee shall be deemed to constitute an assignment of this lease which requires approval of the State.

7.03 Approval of Sublease or Assignment. In granting such approval, the State reserves the right to change the terms and conditions of this lease as it may affect the sublessee/assignee. The State shall be entitled to consider, among other items, the proposed sublessee's/assignee's financial condition, managerial capability, business reputation, nature of the proposed sublessee's/assignee's business, the then current fair market rental value of the lease premises, and such other factors as may reasonably bear upon the suitability of the sublessee/assignee or transferee as a tenant of the lease premises or the holder of this lease.

The State may require reimbursement for any additional administrative costs resulting from the assignment.

Consent of the State to an assignment or transfer shall not constitute a waiver of the State's right to approve or disapprove subsequent assignments or transfers. The acceptance by the State of payment or performance shall not constitute consent to any assignment or transfer, and the State's consent shall be evidenced only in writing.

7.04 Assignee/Transferee Obligations. Each permitted assignee or transferee of the Lessee shall assume all obligations under the lease occurring after the date of the assignment. Notwithstanding any such assignment or transfer, the Lessee shall remain liable for any obligations occurring prior to the date of the assignment and shall be jointly and severally liable with the assignee or transferee for all obligations under the lease occurring after the date of the assignment, unless released in writing by the State. Assignor's obligations shall continue in full force and effect as to include any additional obligations created by any renewal, amendment, modification, extension, assignment or transfer of the lease whether or not assignor shall have

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received notice of, or consented to the same. Assignor waives all surety defenses and waives notice of any breach by a subsequent assignee or transferee.

SECTION 8 IMPROVEMENTS

8.01 Authorized Improvements. No improvement shall be placed on the lease premises without the prior written consent of the State. Consent shall be granted through this lease or a written Letter of Authorization issued by the State. Unauthorized improvements shall either be removed by the Lessee without damage to the lease premises, removed by the State at the Lessee's expense, or become the property of the State, at the State's option.

All improvements currently on the lease premises belong to the State except those authorized improvements which, if any, are listed in Exhibit 8A. Exhibit 8A may be supplemented with a Letter of Authorization issued by the State, for the purpose of authorizing additional improvements to the lease premises during the term of this lease. Letters of Authorization shall be cumulative and become addenda to Exhibit 8A when determining the sum of all authorized improvements.

8.03 Disposition of Authorized Improvements. Upon the expiration or earlier non-default termination of this lease, all improvements shall belong to the State as provided in RCW 79.13.050 without compensation to the Lessee, except for those authorized improvements set forth in Exhibit 8A and all subsequent Letters of Authorization, which are identified within those exhibits as remaining in the Lessee's ownership after expiration of the lease; provided, however, all improvements including crops shall be forfeited and become the property of the State upon cancellation of this lease for default.

If the Lessee has been authorized by this lease to retain ownership of improvements beyond the expiration of this lease and the Lessee is not issued a new lease at expiration, the State, at its sole discretion, will elect one of the following options: 1) the State shall purchase such improvements; 2) the State shall offer the premises and all improvements for lease or sale at public auction; or, 3) the Lessee shall remove such improvements within, and in no case later than, sixty (60) days after expiration of the lease, provided that any improvements remaining thereafter shall belong to the State.

If the value of improvements to remain the property of the Lessee is not set forth in Exhibit 8A and agreement cannot be reached between the State and the Lessee on the value of such improvements under option 1 or 2 above, a review board of appraisers consisting of three (3) individuals will be formed. These individuals must have expertise in the fields of agriculture germane to the permitted use of the lease premises to serve on this review board. Per RCW 79.13.160, said review board shall be made up of one (1) member appointed by the State, whose expenses shall be borne by the State, one (1) member appointed by the Lessee, whose expenses shall be borne by the Lessee, and one (1) member to be appointed by the two aforementioned members, whose expenses shall be shared equally by the Lessee and the State. The majority decision of the review board shall determine the value of such improvements; and, the review board shall report its findings to the State and the Lessee.

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The review board of appraisers shall determine the value of the improvements, by owner, and the value of the land; and, state the distinct values which, when added together, constitute the traditional fair market value of the assets.

Under option 2 above, the State shall, upon determination of the value of the improvements, offer the lease premises for lease or sale at public auction, with improvements. The value of such improvements shall be collected at the time of public auction and the money so collected shall be remitted to the Lessee, less any damages or waste to the property or the State-owned improvements committed by the Lessee.

If the lease prepared as a result of the review board's determination is not bid at the public auction, then the Lessee shall have one hundred eighty (180) days to remove the authorized improvements, after which time all improvements remaining on the lease premises shall belong to the State.

If the lease prepared as a result of the review board's determination is not bid at the public auction, then the Lessee shall have one hundred eighty (180) days to remove the authorized improvements, after which time all improvements remaining on the lease premises shall belong to the State.

8.04 Removal of Improvements During Lease. During the term of this lease, authorized improvements owned by the Lessee may be removed by the Lessee upon the prior written approval of the State. The Lessee shall be liable for any and all rents and any and all damage to the lease premises or any improvement belonging to the State resulting from such removal.

8.05 Surety Bond. A surety bond, savings account assignment, or letter of credit may be required of the Lessee, by the State, to assure completion of construction, development, or removal of any improvements costing in excess of \$2,500.

8.06 State's Repairs. The State shall not be required or obligated to make any repairs, alterations, maintenance, replacements, or repairs in, on, or about the lease premises, or any part thereof, during the term of this lease.

8.07 Lessee's Repairs, Alteration, and Maintenance. The Lessee shall, at its sole cost and expense, keep and maintain the lease premises and all improvements thereon and all facilities appurtenant thereto (regardless of ownership) in good order and repair and safe condition for the safe conduct of any activities or enterprises conducted on the lease premises pursuant to this lease, and keep and maintain the whole of the lease premises, including all improvements in a clean, sanitary and attractive condition.

8.08 Repair and Replacement of State-Owned Irrigation Equipment. The Lessee shall maintain and repair State-owned improvements at the Lessee's own expense. The State-owned irrigation improvements shall be maintained or repaired in a manner provided for in Subsections 2.04 and 2.05. The State may replace State-owned irrigation components, solely at its discretion, if failure is a result of the component exceeding its life expectancy or if replacement of State-

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owned components are determined to be economically beneficial to the State. The State shall only be responsible for those replacement costs not covered by the Lessee's Boiler and Machinery insurance, as required in Subsection 5.05.

SECTION 9 DEFAULT AND REMEDIES

9.01 Nonwaiver. Waiver by the State of strict performance of any provision of this lease shall not be a waiver of nor prejudice the State's right to require strict performance of the same provision in the future or of any other provision. The acceptance of performance, rent, or any other sum owing, by the State following a breach by the Lessee of any provision of this lease shall not constitute a waiver of any right of the State with respect to such breach and the State shall be deemed to have waived any right hereunder only if the State shall have expressly done so in writing.

9.02 Attorney Fees and Venue. Each party shall be responsible for their own attorney fees and court costs in the event of a dispute arising out of this agreement except as set forth in Subsections 6.10 and 9.05. Venue for resolving such disputes shall be in Thurston County Superior Court of Washington.

9.03 Notices and Submittals. Any notice or submittal given under this lease shall be deemed as received when delivered by hand or five (5) days after deposit in the United States mail with first-class postage affixed, addressed as noted below. Changes of address shall immediately be given in accordance with this subsection. Any notice or submittal given under this lease shall be sent:

To the State:

Where lease provisions require submittal to the State office:

Department of Natural Resources
Product Sales and Leasing Division
P.O. Box 47016
Olympia, WA 98504-7061

Where lease provisions require submittal to the State at its Region Office:

Department of Natural Resources
Southeast Region Office
713 Bowers Road
Ellensburg, WA 98926-9301

To the Lessee:

At the address affixed with the Lessee's signature or the Lessee's last known address.

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9.04 Landlord Liens. The State may file, and maintain during the term of this lease, landlord or crop liens in order to secure any payment or obligation under this lease.

9.05 Lessee Liens. The Lessee shall not suffer or permit any lien to be filed against the State's interest in the lease premises, improvements or crops growing thereon by reason of work, labor, services or materials performed thereon or supplied to, by or through the Lessee. If any such lien is filed, the Lessee shall immediately cause the same to be discharged of record, but in no case later than thirty (30) days after the date of filing or creation of such lien unless other arrangements are authorized in writing by the State in advance. The Lessee shall indemnify the State for any costs, damages or expenses (including attorneys' fees and courts' costs) incurred as a result of such liens or in obtaining their discharge whether such costs, damages or expenses were incurred prior or subsequent to lease termination or cancellation.

9.06 Default. If the Lessee breaches or defaults on any undertaking, promise or performance called for herein, whether material or not, the State may cancel this lease after the Lessee has been given thirty (30) days notice of the breach or default and such breach or default has not been corrected within such time. Upon such cancellation, all improvements and crops on the lease premises shall be forfeited and become the property of the State subject only to any previously approved waiver of interest or security interest, and Lessee shall immediately deliver up possession of the lease premises to the State. The State may seek damages for any and all violations or defaults with or without canceling this lease. In the event the State deems the breach or default to constitute a threat to safety, life, or property it may elect to intervene immediately, without notice, to remedy the breach or default and the Lessee hereby agrees to repay the State for all costs in remedying the breach or default upon demand, together with interest thereon from the date of expenditure at the rate set forth in this lease. Alternatively, the State may require the Lessee to act immediately to remedy the breach or default, should the State deem it a threat to safety, life, or property.

In the event of any default by the Lessee, the State shall have the right, with or without canceling the lease, to reenter the lease premises and to remove all persons and property from the lease premises and take whatever actions may be necessary or advisable to relet, protect or preserve the lease premises. Any property so removed may be stored in a public warehouse or other suitable place or otherwise disposed of in the State's discretion at the expense and for the account of the Lessee. The State shall not be responsible for any damages or losses suffered by the Lessee as a result of such reentry, removal, storage or other disposition, and no such action shall be construed as an election to terminate this lease unless a written notice of termination is given to the Lessee.

Whether or not the State elects to cancel this lease on account of any default by the Lessee and subject to any non-disturbance and attornment agreements, if any, the State shall have a right to terminate any and all subleases, licenses, concessions, or other arrangement for possession affecting the lease premises. Alternatively, the State, at its sole discretion, may succeed to the Lessee's interest in such sublease, license, concession, or arrangement, and the Lessee shall have no further right to, or interest in the rent or other consideration receivable thereunder.

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9.07 Survival. All obligations of the Lessee to be performed prior to the expiration or earlier termination shall not cease upon the termination or expiration of this lease, and shall continue as obligations until fully performed. All clauses of this lease which require performance beyond the termination or expiration date shall survive the termination or expiration date of this lease. However, upon expiration or earlier termination of this lease, the rights of the Lessee and of all persons, firms, corporations, and entities claiming under the Lessee in and to the lease premises and all improvements thereon, unless specified otherwise in this lease, shall cease.

9.08 State's Right to Cure Defaults. If the Lessee fails to perform and is in default of any undertaking or promise contained herein, including those set forth in any plan of development, the State shall have the option, but is not obligated, to make such performance after giving ten (10) days written notice to the Lessee. The State's costs and expense to correct the Lessee's failure to perform shall be reimbursed by the Lessee and shall be immediately due and payable, together with interest accruing from the date such cost or expense is incurred.

9.09 Remedies Cumulative. The specified remedies to which the State may resort under the terms of this lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which the State may lawfully be entitled in case of any breach or threatened breach by the Lessee of any provision of this lease.

9.10 Force Majeure. The Lessee's failure to comply with any of the obligations under this lease shall be excused only if due to causes beyond the Lessee's control and without the fault or negligence of the Lessee, including acts of God, acts of the public enemy, acts of any government, fires, floods, epidemics and strikes.

SECTION 10 ROADS

10.01 Access Across Premises. Lessee is authorized, subject to any rights previously granted to third parties, to use existing roads on the Premises as needed to enjoy the permitted uses, the location of which are illustrated on the map(s) attached as Exhibit 10A. Lessee may, with written approval of State, construct additional roads.

10.02 Access to Premises.

Adjacent State Land. Access to Premises includes a non-exclusive right to use an existing or to be constructed road over the location shown on the map(s) attached as Exhibit 10A for the purpose of exercising the rights granted herein.

10.03 Road Repair. Lessee shall repair or cause to be repaired at its sole cost and expense that damage to said road(s) occasioned by it which is in excess of that which it would cause through normal and prudent usage of said road(s). Within fifteen (15) days of the damage, Lessee shall meet with State and provide a plan of operation for the repairs.

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10.04 Road Maintenance. Road maintenance is defined as work normally necessary to preserve and keep the roads in their present condition or as hereafter improved. At a minimum, roads shall be maintained to meet forest practice standards set forth in WAC 222-24-050 as now written or hereafter amended. Unless contrary to the terms of an express easement authorizing access, the cost of performance of road maintenance and resurfacing shall be allocated on the basis of respective uses of said road. During periods when a road, or portions thereof, is used solely by Lessee, Lessee shall solely maintain that portion of said road to the standards set forth above; provided State reserves the right to make reasonable allocations concerning priority of use and maintenance of said roads by it and others. Where there is joint use of a road, or portion thereof, Lessee shall perform or cause to be performed, or contribute or cause to be contributed, that share of maintenance and resurfacing occasioned by such use as hereinafter provided.

During periods when more than one party is using the same road or any portion thereof, the parties hereto shall meet and establish necessary maintenance provisions. Such provisions shall include, but shall not be limited to:

1. The appointment of a maintainer, which may be one of the parties hereto or any third party, who will perform or cause to be performed at a reasonable and agreed upon rate the maintenance and resurfacing of the road or the portion thereof being used; and
2. A method of payment by which each party using said road or a portion thereof, shall pay its pro rata share of the cost incurred by said maintainer in maintaining or resurfacing said road or portion thereof.

10.05 Improvements. Lessee shall construct no improvements to roads where access has been provided by State without the prior written consent of State, which shall not be unreasonably withheld. Unless State agrees to share in the cost of the improvement in writing, the improvements shall be at the sole cost of the improver.

10.06 Insurance. The provisions under Subsection 5.05 shall apply to Lessee's use of roads authorized herein.

SECTION 11 GENERAL PROVISIONS

11.01 No Partnership. The State is not a partner nor a joint venturer with the Lessee in connection with the activities conducted and business carried on under this lease, and the State shall have no obligation with respect to the Lessee's debts or other liabilities.

11.02 Lessee's Authority. Persons executing this lease on behalf of the Lessee represent that they are authorized to do so and represent and warrant that this lease is a legal, valid, and binding obligation on behalf of the Lessee, and is enforceable in accordance with its terms.

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11.03 State's Authority. This lease is entered into by the State pursuant to the authority granted by statute and the Constitution of the State of Washington. The terms and conditions hereof are subject to such statutory and constitutional provisions as may be now in effect and such provisions which do not impair the contractual rights of the Lessee under this lease which may lawfully be enacted subsequent to the date of this lease.

11.04 Preservation of Markers. Any legal land subdivision survey corners, reference points or monuments are to be preserved. If such are destroyed or disturbed, they shall be re-established by a licensed land surveyor in accordance with U.S. General Land Office standards at the Lessee's expense. Corners and/or reference points or monuments that must necessarily be disturbed or destroyed in the process of carrying out the operations allowed by this lease must be adequately referenced and/or replaced in accordance with Chapter 58.09 RCW. Such references and replacements must be approved in writing by the State prior to removal of said corners, reference points or monuments.

11.05 Condemnation. If all of the premises are taken by any public authority under the power of eminent domain, this lease shall terminate as of the date possession was taken by said public authority pursuant to such condemnation. If any part of the lease premises is so taken and, in the opinion of either the State or the Lessee, it is not economically feasible to continue this lease, either party may terminate the lease. Such termination by either party shall be made by notice to the other party given not later than thirty (30) days after possession is so taken, the termination to be effective as of the later of thirty (30) days after said notice or the date possession is so taken. If part of the lease premises is so taken and neither the State nor the Lessee elects to terminate this lease, or until termination is effective, as the case may be, the payment due under this lease shall be abated in the same proportion as the portion of the lease premises so taken bears to the whole of the lease premises. All damages awarded for the taking or damaging of all or any part of the lease premises, or the State-owned improvements thereon, shall belong to and become the property of the State, and the Lessee hereby disclaims and assigns to the State any and all claims to such award.

The State will not claim any interest in any award for personal property or authorized improvements belonging to the Lessee in accordance with authorized and crop improvements set forth in Section 8. The State may share in the value of crops in accordance with the crop division and/or additional payment set forth in Section 3. The State will not claim a share of any award made to the Lessee for interruption of or damage to the Lessee's business or for moving expenses.

11.06 Interpretation and Numbering. This lease has been submitted to the scrutiny of all parties hereto and their counsel if desired, and shall be given a fair and reasonable interpretation in accordance with the words hereof, without consideration or weight given to it being drafted by any party hereto or their counsel. Section and subsection numbers, headings, or titles are for convenience only and are not to be construed to limit or to extend the meaning of any part of this lease.

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Section and subsection numbers may be omitted or out of sequence because of inclusion or exclusion of sections or subsections in this lease at the option of the State. Cross references to sections or subsections that are not included in this lease should not be construed as material references.

11.07 Time of Essence. Time is expressly declared to be of the essence of this lease and each and every covenant of the Lessee hereunder. In the event time for performance falls on a weekend or legal holiday designated by the United States or Washington State, performance shall be deemed to be timely rendered if so rendered on the next business day.

11.08 Lease Changes and Additions. Any changes or additions to this lease or the attached exhibits shall be made in writing, executed by the parties hereto, and neither the State nor the Lessee shall be bound by verbal or implied agreements.

11.09 Entire Agreement. This written lease or its successor or replacement contains the entire agreement of the parties hereto with respect to the matters covered hereby, and no other agreement, statement or promise made by any party hereto, or to any employee, officer or agent of any party hereto, which is not contained herein, shall be binding or valid.

11.10 Invalidity. If any term or provision of this lease or the application thereof to any person or circumstance shall to any extent prove to be invalid, unenforceable, void, or illegal, the remainder of this lease, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this lease shall be valid and be enforced as written to the fullest extent permitted by law.

11.11 Discrimination. The Lessee shall not conduct or suffer any business upon the lease premises which unlawfully discriminates against any person on the basis of race, color, creed, religion, sex, age, or physical or mental handicap.

SAMPLE LEASE

11.12 Exhibits. Exhibits referenced herein, including those which may be added during the term of this lease, are incorporated herein by reference and are to be considered terms of this lease.

«Lessee_Business_Name»

Dated: _____, 20____.

«Signatory_Name», «Title_if_needed»

UBI No.

«Lessee_Street_Address»

«City_State_Zip»

Phone: «Lessee_Phone»

STATE OF WASHINGTON

DEPARTMENT OF NATURAL RESOURCES

Dated: _____, 20____.

Doug Sutherland

Commissioner of Public Lands

Approved as to form this

3rd day of October, 2000

Jim Schwartz, Assistant Attorney General

SAMPLE LEASE

NOTARIAL CERTIFICATE ACKNOWLEDGMENT IN A REPRESENTATIVE CAPACITY

STATE OF _____)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____
_____ [name(s)] (**is / are**) the person(s)
who appeared before me, and said person(s) acknowledged that (**he / she / they**) signed this
instrument, on oath stated that (**he / she / they**) (**was / were**) authorized to execute the
instrument, and acknowledged it as the _____ [office(s) or
title(s)] of _____ (business name of the
Lessee) to be the free and voluntary act of such party(**ies**) for the uses and purposes mentioned in
the instrument.

DATED: _____

(Seal or Stamp)

NOTARY PUBLIC in and for the
State of _____
My appointment
expires _____

SAMPLE LEASE

NOTARIAL CERTIFICATE ACKNOWLEDGMENT IN A REPRESENTATIVE CAPACITY

STATE OF WASHINGTON)
)ss
County of _____)

On this _____ day of _____, 20____, personally appeared before me _____, to me known to be the Commissioner of Public Lands of the Department of Natural Resources, State of Washington, who executed the within and foregoing instrument on behalf of the State of Washington, and acknowledged said instrument to be the free and voluntary act and deed of the State of Washington for the uses and purposes therein mentioned, and on oath stated that [he/she] was authorized to execute said instrument and that the seal affixed is the official seal of the Commissioner of Public Lands for the State of Washington.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

DATED: _____

(Seal or Stamp)

NOTARY PUBLIC in and for the
State of _____
My appointment
Expires _____

EXHIBIT 1A
Legal Description of Premises, and Encumbrances, if any

As Proposed by Bidder based upon the Parcel(s) Bid

EXHIBIT 6A

Resource Management Plan

Lease No. «Lease_No»

OBJECTIVE

This Resource Management Plan (RMP) describes the management objectives and practices agreed upon by the Department of Natural Resources (DNR) and the Lessee to manage agricultural and grazing production on Washington's trust lands. Adherence to this RMP is mandatory. Failure to comply may result in default under Subsection 9.06 of the associated lease or leases. If the management requirements of this RMP cannot be followed due to climatic variations or unforeseen events, the Lessee shall consult with the DNR unit manager regarding any proposed changes to the RMP.

CROPLAND MANAGEMENT

Soil Additions and Pesticides: Organic and inorganic substances shall be applied to meet plant requirements. Application methods utilized shall aid in the prevention of substances moving into water bodies, leaching into ground water, or building excessive residual levels in the soil profile. This will be accomplished through following all federal, state and local laws, and as prescribed by label.

The Lessee shall have and follow an Integrated Pest Management (IPM) plan. This means utilizing a coordinated decision-making and action process that considers all pest management methods and strategies, and applies them in an environmentally and economically sound manner to meet pest management objectives. The elements of integrated pest management include:

1. Preventing pest problems;
2. Monitoring for the presence of pests and pest damage;
3. Establishing the density of the pest population (which may be zero) that can be tolerated;
4. Treating pest problems to reduce their populations below the tolerable threshold, using strategies that may include biological, cultural, mechanical, and chemical control methods, and that consider human health, ecological impact, feasibility and cost-effectiveness; and
5. Evaluating the effects and efficacy of pest treatments

Chemigation/Fertigation: If chemigation or fertigation is utilized, the Lessee will meet all of the requirements under Title 16-228 of the Washington Administrative Code.

Fertilizer Management: The Lessee shall use soil and petiole sampling and testing, to determine amounts and timing of nutrient applications required to meet the needs of the plants to be grown. Methods of application shall be used that will ensure optimum uptake by the plants, while insuring that nutrients will not be transported into any water bodies.

Irrigation Management: The Lessee shall use science-based irrigation scheduling practices. These practices shall match the irrigation water application to the water requirements of each crop being grown to promote efficiency, improve crop yield, and minimize water quality impairment. Irrigation methods shall be used to ensure proper amounts of water are delivered to the plants in a timely fashion.

Soil Moisture Management: The Lessee shall use equipment which accurately measures soil moisture levels, such as tensiometers, gypsum blocks, neutron probes, and time domain reflectometry. The moisture level measurements shall be used to assist in the scheduling of irrigations, and to ensure that water and nutrients are not leached to the water table.

System Monitoring: The Lessee shall monitor existing irrigation systems to ensure that they are operating near optimum efficiency.

Water Metering: The Lessee shall install and maintain water meters on all water delivery systems.

Record Keeping: The Lessee shall maintain a record of all farming operations, including the dates of each tillage, fertilizer, pesticide, and seeding operation for each State field. The information will cover all farming operations that followed harvest of the previous crop and will be submitted to the State upon request.

WEED MANAGEMENT

Noxious Weed Control: The Lessee shall prevent noxious weed infestations by applying management practices which discourage their establishment or spread. The Lessee shall detect and control the invasion of new noxious weeds. Noxious weeds will be controlled using appropriate mechanical, biological and chemical treatments that meet the requirements of state and federal law.

The Lessee shall use Integrated Pest Management (IPM) to control weeds. This means using a coordinated decision-making and action process that considers all weed management methods and strategies, and applies them in an environmentally and economically sound manner to meet weed management objectives. The elements of integrated pest management for weeds include:

1. Preventing weed problems;
2. Monitoring for the presence of weed species;

3. Establishing the density of the weed population (which may be zero) that can be tolerated;
4. Treating weed problems to reduce their populations below the tolerable threshold, using strategies that may include biological, cultural, mechanical, and chemical control methods, and that consider human health, ecological impact, feasibility and cost-effectiveness; and
5. Evaluating the effects and efficacy of weed control treatments.

EXHIBIT 6E
Paterson Orchard Legal Description

PARCEL A:

That portion of Section 4, Township 5 North, Range 26 East, of the Willamette Meridian, in Benton County, Washington, described as follows:

Beginning at the Southwest corner of the North half of the Southwest quarter; thence East along the South line of said North half of the Southwest quarter for 2,640 feet more or less to the Southeast corner of said North half of the Southwest quarter; thence North parallel with the West line of said Section 4, for 2,640 feet; thence West at right angles to the West line of said Section 4, for 2,340 feet; thence North for 1,320 feet, more or less to a point 300 feet West of the Northwest corner and on the North line of said Section 4; thence West along the North line of said Section 4, for 300 feet, more or less, to the Northwest corner of said Section 4; thence South along the West line of said Section 4, for 3,960 feet more or less, to the Southwest corner of the North half of the Southwest quarter and the True Point of Beginning, EXCEPT a portion conveyed to the United States of America by Deed recorded under Auditor's File No. 564450, AND EXCEPT, State Highway.

TOGETHER WITH an easement from U & I Group, Inc., described as follows:

A pipeline easement situated in Section 8, Township 5 North, Range 26 East, W.M., Benton County, Washington, being 20 feet in width, with 10 feet lying on each side of the following described line:

Commencing at the North quarter corner of Section 8; thence North 86°11'20" East along the North line of said Section a distance of 681.03 feet; thence South 00°24'26" East a distance of 220 feet, more or less, to the Southerly right-of-way of State Highway No. 14, the True Point of Beginning; thence continuing South 00°24'26" East a distance of 980 feet, more or less, to Government Take Line of Tract 1227 and the terminus of this description.
Assessor's Parcel No. 1-0456-200-0002-001.

PARCEL B:

Section 5, Township 5 North, Range 26 East, of the Willamette Meridian, in Benton County, Washington, EXCEPT that portion known as Paterson Heights, AND EXCEPT State Highways, subject to Bonneville Power Administration transmission line right-of-way over the South half of the South half of said Section 5.
Assessor's Parcel No. 1-0556-100-0001-001.

PARCEL C:

That portion of Section 33, Township 6 North, Range 26 East, of the Willamette Meridian, in Benton County, Washington, described as follows:

Beginning at the Southwest corner of said Section 33; thence East along the South line of said Section 33 for 300 feet; thence North parallel with West line of said Section 33 for 490 feet; thence angle to left for 60°00'00" more or less for a distance of 350 feet more or less to intersect the West line of said Section 33 at a point 660 feet North of the Southwest corner of said Section 33; thence South along the West line of said Section 33 for 660 feet to the Southwest corner of said Section 33 and the True Point of Beginning.
Assessor's Parcel No. 1-3366-300-0000-000.

PARCEL D:

That portion of Section 32, Township 6 North, Range 26 East, of the Willamette Meridian, in Benton County, Washington, described as follows:

Beginning at the Southeast corner of said Section 32; thence North along the East line of said Section 32 for 660 feet; thence angle to the left for 60°00'00" for a distance of 1,600 feet; thence North parallel with the West line of said Section 32 for 1,260 feet; thence angle to the left for 60°00'00" for a distance of 1,390 feet; thence angle to the left for 51°00'00" for a distance of 3,030 feet more or less to the West line of said Section 32; thence South along the West line of said Section 32 for 2,410 feet more or less to the Southwest corner of said Section 32; thence East along the South line of said Section 32 for 5,280 feet, more or less to the Southeast corner of said Section 32, EXCEPT State Highway.

Assessor's Parcel No. 1-3266-300-0001-001.

PARCEL E:

That portion of the North half of Section 8, Township 5 North, Range 26 East, of the Willamette Meridian, Benton County, Washington, lying North of the Northern right-of-way line of State Highway 14 and East of the Eastern boundary line of the Plat of Paterson Heights, which Plat is recorded in the records of the Auditor of Benton County, Washington.

Assessor's Parcel Nos. 1-0856-200-0001-000 and 1-0856-100-0001-002.

PARCEL F:

That portion of Section 32, Township 6 North, Range 26 East, W.M., described as follows:

Commencing at the Southeast corner of said Section 32; thence North 2°56'12" West along the East line thereof 660.00 feet; thence North 62°56'12" West 1460.75 feet to the point of beginning; thence North 62°56'12" West 139.25 feet; thence North 1°43'22" West 1,260.00 feet; thence North 61°43'22" West 1,390.00 feet; thence North 58°44'50" East 856.99 feet; thence North 65°47'39" East 342.60 feet; thence North 84°39'46" East 331.28 feet; thence South 0°14'36" East 1,158.98 feet; thence South 20°37' West 217.79 feet; thence South 12°05'22" West 219.15 feet; thence South 0°28'36" West 281.24 feet; thence South 9°59'09" East 215.17 feet; thence South 20°51'17" East 259.69 feet to a line which bears North 0°14'36" West from the Point of Beginning; thence South 0°14'36" East 283.75 feet to the Point of Beginning.

Assessor's Parcel No. 1-3266-100-0001-002.

EXHIBIT 8A

Authorized Improvements

State-owned improvements include, but are not limited to:

Description

Location

Improvements authorized by the State:

Description

Location

The Lessee is hereby authorized to place the following improvements on the lease premises:

Description

Location

This authorization will expire on _____ (**date as proposed by Bidder**) if the improvements are not completed and certified by this date.

Provided, however, upon expiration or earlier termination of this lease, the State shall acquire ownership of the following authorized improvements without compensation to the Lessee:

Description

Location